

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

138. Elections--Ballot--Instructions to Voters--Law Defined--Whether to Vote for One or Two for Nonpartisan Nomination.

CARSON CITY, August 30, 1922.

HON. FRANK E. BROCKLISS, District Attorney, Minden, Nevada.

Dear Sir: You have propounded the following inquiry:

Should voters on the primary election ballot be instructed to vote for one or two candidates for nomination for Justice of the Supreme Court or District Judge?

My answer is that they should be instructed to vote for one. Laws must be reasonably construed and interpreted. Absurdities are to be avoided. It was certainly not the intent of the Legislature that the same nonpartisan voters may vote to nominate a candidate for one office and then vote to nominate another person for the same office, one of whom is destined to be defeated at the general election. The purpose of a primary election is to give voters an opportunity to nominate persons for whom they can vote at the general election and is not for the purpose of allowing voters to nominate certain persons for whom they can vote and to nominate others for whom they cannot possibly vote. The logic of the situation herein presented demands that we consider the voters when voting at a nonpartisan primary election as belonging to groups--Group No. 1, Group No. 2, Group No. 3, etc. The respective groups vote to nominate one person for the offices mentioned, for the reason that only one office is to be filled and voters can only vote for one person for either of said offices at the general election. No group is allowed to vote for an actual choice, and then to vote for some person that said group thinks may be easily defeated by the person who is their actual choice. If the candidate of one group receives the highest vote, then said candidate becomes a nominee to be voted on at the general election. In order to give the voters an opportunity to choose between two candidates at the general election the law makes the person receiving next to the highest vote at a nonpartisan primary election a nominee. It is not reasonable to contend that the legislative intent was to allow the same voters to nominate two candidates for one office, and then be in a position where they would, in order to elect their actual choice, have to strive to defeat one of the persons they themselves had nominated. Such a dishonest and unfair method was certainly not contemplated by the Legislature. The manifest unfairness of the same voters voting to nominate two candidates for one place and then, after nominating them, to be in a position where they can support only one of them is apparent. Such injustice should be avoided if possible. To allow a voter to vote to nominate some person for whom he cannot possibly vote at the general election, is repulsive to honesty and fairness. Laws

should be construed and interpreted to promote honesty and fairness rather than to be construed in a way that will lead to corrupt methods. Farcical indeed, would become a primary election under a law which would permit voters to nominate one candidate with the intent of endeavoring to elect him, and another candidate with the deliberate intention of defeating him. In the case of nominations by party the voters of the respective parties vote to nominate candidates equal to the offices to be filled. In such a case the voters vote for the same number of candidates for a given office at the primary election that they are allowed to vote for at the general election. In such a case voters do not vote to nominate persons whom, if successful in the primary election, they cannot support at the general election. It is, therefore, my opinion that a reasonable construction and interpretation of the primary election law leads to but one conclusion, and that is that voters who vote for nonpartisan nominees are allowed to vote for but one candidate for one nonpartisan office to be filled.

Yours very truly,

L. B. FOWLER, Attorney-General.

139. Elections--In Canvassing Vote, Board of County Commissioners May Not Open Envelopes Containing Ballots--Tally-Sheets Are Controlling.

CARSON CITY, September 7, 1922.

HON. CLARK J. GUILD, District Attorney, Yerington, Nevada.

Dear Sir: Answering your inquiry as to whether or not the Board of County Commissioners, in canvassing the votes cast at the recent primary have the right to open the envelopes containing the ballots and count the same, you are advised that the board may not do so.

The canvass of the votes must be confined to the tally-sheets; the envelopes may be opened only by a court of competent jurisdiction in a proper proceeding.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, Deputy Attorney-General.

140. Emergency Loan--Transmitted Papers Deficient in Certain Respects.

CARSON CITY, September 8, 1922.

HON. GILBERT C. ROSS, Secretary of State Board of Finance.